IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 485 of 2004

Date of decision: 10.9. 2007.

Sunil Kumar. Appellant

-vs-

State of Himachal Pradesh Respondent

Coram

Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? No.

For the appellant : Mr. Anup Chitkara, Advocate.

For the respondent : Mr. Som Dutt Vasudeva, Additional Advocate General with Mr D.S.Nainta, Deputy Advocate General.

Surjit Singh, J. (oral)

Heard and gone through the record.

Sunil Kumar appellant stands convicted of an offence under Section 20 of the Narcotic Drugs and Psychotropic Substance Act, hereinafter called the 'Act', and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of rupees one lac and in default of payment of fine, to undergo imprisonment for six months by the trial Court. He has preferred the present appeal seeking reversal of his conviction into acquittal.

First, the allegations on which the appellant was sent up for trial may be noticed. On November 9, 2003, around 7.00 a.m., Sunder Lal (PW10), Additional Superintendent of Police, received a telephonic information that the appellant had carried Charas to his

[1] Whether reporters of the Local papers are allowed to see the judgment?

house in village Kakru by Car No. HP-30-0370 and kept the same in refrigerator. The information was reduced into writing. Thereafter, PW10 formed a party headed by himself and went to village Kakru. He asked the Executive Magistrate (PW4) Parbhat Chand Sharma to become a witness. Parbhat Sharma reached the spot. One Amarjit Singh was also associated as a witness. The police officials who accompanied Sunder Lal (PW10) were S.I. Nirmal Singh, S.I. Des Raj, Constable Kuldip Chand, Constable Som Dutt, Constable Balbir Singh and constable Vinod Kumar. In the presence of the above named Executive Magistrate, Amarjit Singh and some of the above named police officials, the house of the appellant was searched and he was called upon to open the refrigerator kept in a bed room. The appellant took out the key and opened the door of the refrigerator. A packet, containing charas, was recovered from the refrigerator. On weighment, the charas was found to be 2kg 350 grams. 50 Grams charas was separated out of the recovered charas and it was divided into four parts. Each part was put into a separate parcel. The parcels were sealed with a seal that produced the impression of English letter ‘N’. Bulk charas was made into another parcel and that too was sealed with the same seal. The four samples were marked A1, A2, A3 and A4. Written report of the matter was sent to the Police Station for formal registration of the case. A request was also made to the Station House Officer to send some officer from the Police Station for handling the further investigation of the case. Sub Inspector Pirthi (PW11) was deputed for conducting the further investigation. Case property was produced to him by PW10 Sunder Lal, Additional Superintendent of Police. Pirthi Raj prepared outer covers of cloth for putting in them the parcel containing the bulk stuff and the sample parcels. Each

parcel was put into a separate cloth bag so prepared. Those bags were sealed with a seal that produced the impression of English letter “PR” and the sample parcels were marked S1, S2, S3 and S4.

Two sealed parcels containing the samples were sent to the Chemical Examiner along with NCB form Exhibit PW8/A. In the said NCB form, it was stated against column no. 6, 7 and 8 that the samples were marked as A1, A2, A3 and A4 and sealed with a seal that produced the impression of English letter ‘N’. These two samples which were examined in the laboratory, as per the report of the Chemical Examiner, were marked A2 and A4 and the seals impressions fixed thereon tallied with the specimen seal impressions sent separately. The Chemical Examiner reported that one sample part contained 29.11% resin and the other 30.1% resin.

On receipt of the report, the appellant was challaned. The trial Court charged him with offence under Section 20 of the Act and put him on trial and ultimately convicted and sentenced him, as aforesaid.

We have heard the learned counsel for the appellant and the Additional Advocate General and gone through the record.

The main thrust of the submissions made by the learned counsel for the appellant is that the report of the Chemical Examiner does not stand connected with the stuff that was allegedly recovered from the house of the appellant. As noticed herein above, the samples were put into two separate bags of cloths and each bag of cloth was sealed and marked twice. Samples parts were initially sealed with a seal that produced the impression of letter ‘N’ of English alphabet and marked A1, A2, A3 and A4. Then they were put into four other cloth bags and those bags were sealed with a

seal that produced the impression of letters “PR” of English alphabet and were marked as S1, S2, S3 and S4. Now it was the seal impression and the marks put in hand, on the outer bags, which the Chemical Examiner was supposed to have noticed first. But his report shows that the samples which were examined by him were only in one cloth bag each and those bags bore the seal impressions which read like English letter ‘N’ and were marked A2 and A4, whereas, the sample parcels sent to him were supposed to bear apparently seal impressions “PR” and any of the following four hand written marks, i.e, S1, S2, S3 or S4. Seal impression ‘N’ and marking A2 and A4 were supposed to be there on the inner cloth bags. This shows that what was sent to the Chemical Examiner was different from the samples of this case or at least a reasonable doubt is there that what was sent to and examined by the Chemical Examiner was the sample of the stuff allegedly recovered from the appellant.

In view of the above said position, we accept the appeal, set aside the conviction and the sentence of the appellant and acquit him. He being in jail, serving out the sentence awarded by the trial Court, is ordered to be released at once, in case his custody is not required in any other case.

(Surjit Singh)
Judge.

(Surinder Singh)
Judge.

September 10, 2007.
(bm)